

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

### Respondent,

No. CR S-05-125 MCE GGH

VS.

ANDREW BEDENFIELD,

## ORDER AND

Movant.

## **FINDINGS AND RECOMMENDATIONS**

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Pending before the undersigned is movant's January 27, 2010, amended motion pursuant to 28 U.S.C. § 2255. While not a model of clarity, the motion appears to raise two claims. First, movant states that he is seeking a reduction of his sentence pursuant to 18 U.S.C. § 3582(c)(2). Movant argues that his sentence should be reduced pursuant to Amendment 709 to the United States Sentencing Guidelines which changed the manner in which multiple prior sentences are counted in the computation of criminal history scores. See court file doc. # 331, pp. 46-50 of 86. The undersigned is not authorized to consider motions brought pursuant to 18 U.S.C. § 3582(c)(2).

In his second claim for relief, movant states that he is seeking credits for prior custody pursuant to 18 U.S.C. § 3585(b). See court file doc. # 331, pp. 68-72. Because movant challenges the execution of his sentence in this claim, rather than the legality of his sentence, this

1 claim should be brought in a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 in  
2 the district court where he is confined. See Dunne v. Henman, 875 F.2d 244, 249 (9th Cir. 1989)  
3 (petition brought pursuant to 28 U.S.C. § 2241 should be brought in district where petitioner is  
4 confined). Movant is confined in Lewisburg, Pennsylvania. Accordingly, his request for custody  
5 credits pursuant to 18 U.S.C. § 3585(b) should be raised in the Pennsylvania district court where  
6 he is confined.

7 IT IS HEREBY ORDERED that movant's motion pursuant to 28 U.S.C. § 2255 is  
8 construed to contain a request for reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2); the  
9 undersigned is not authorized to consider this request;

10 IT IS HEREBY RECOMMENDED that:

11 1. Movant's request for credits pursuant to 18 U.S.C. § 3585(b) contained in his  
12 motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 be denied for  
13 lack of jurisdiction;

14 2. The Clerk of the Court be directed to close the companion civil cases, 09-3280  
15 and 09-3406.

16 These findings and recommendations are submitted to the United States District  
17 Judge assigned to this case pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty  
18 days after being served with these findings and recommendations, movant may file written  
19 objections with the court. The document should be captioned "Objections to Magistrate Judge's  
20 Findings and Recommendations." Movant is advised that failure to file objections within the  
21 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951  
22 F.2d 1153 (9th Cir. 1991).

23 DATED: March 3, 2010

24 /s/ Gregory G. Hollows  
25

26 bed125.ord  
UNITED STATES MAGISTRATE JUDGE